



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Docket No: Q63124

Hiroiyuki NISHII, et al.

Appln. No.: 09/809,273

Group Art Unit: 1774

Confirmation No.: 4971

Examiner: Dawn L. Garrett

Filed: March 16, 2001

RECEIVED
MAY 14, 2003
TC 1700 MAIL ROOM

For: MEMBER FOR ELECTROLUMINESCENT DEVICE AND ELECTROLUMINESCENT
DEVICE HAVING THE SAME

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 1.192

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 1.192, Appellants submit the following:

I. REAL PARTY IN INTEREST

The real party in interest is assignee, NITTO DENKO CORPORATION of Osaka, Japan, by virtue of an assignment executed by Hiroiyuki Nishii and Hiroaki Mashiko (hereinafter "Appellants") on February 6, 2001, and recorded by the Assignment Division of the U.S. Patent and Trademark Office on March 16, 2001, at Reel 011618, Frame 0692.

II. RELATED APPEALS AND INTERFERENCES

Appellants, Appellants' legal representative, and the Assignee in this application are not aware of any other appeals or interferences which will directly affect or be affected by or have a bearing on the Board's decision in the pending appeal.

05/13/2003 SSESHE1 00000153 194880 09809273

01 FC:1402 320.00 CH

III. STATUS OF CLAIMS

This is an appeal from the Examiner's rejection of claims 1-12.

IV. STATUS OF AMENDMENTS

The Response of December 13, 2002 included no change in status of the appealed claims. The Amendment filed on July 10, 2002 was entered. There are no unentered Amendments of record.

V. SUMMARY OF THE INVENTION

Appellants' invention relates to a member used in an electroluminescent (hereinafter "EL") device and an EL device having the member. Specification, page 1, 1st paragraph.

The organic EL devices are known to have advantages of a wide angle of view, a high contrast, a low driving power, a small thickness and a broad working temperature, and are expected to be applicable to various items of equipment, such as a display of portable equipment of a light-emitting device. Specification, page 1, 2nd paragraph. However, the light-emitting performance properties of a conventional organic EL device undergoes serious deterioration with time or use under a high temperature condition, such as appearance of black spots caused by moisture, oxygen or organic gas in the laminate structure. Specification, the paragraph bridging pages 1 and 2.

An organic EL device having a means for preventing moisture from penetrating inside the laminate structure has been proposed, wherein an alkali or alkaline earth metal oxide which remains solid after adsorbing moisture, is fixed inside the organic EL device as a desiccant. However, such a desiccant is apt to break or disintegrate in handling and is incapable of

APPELLANTS' BRIEF ON APPEAL
UNDER 37 C.F.R. § 1.192
U.S. Appln. No.: 09/809,273

removing oxygen and organic gas. In addition, it is difficult to fix such a desiccant inside an organic EL device and to adjust its ability to adsorb moisture. Specification, page 2, 1st full paragraph.

Appellants have found that deterioration of the light-emitting performance of EL devices can be reduced and the gaseous component removing ability can be adjusted, by fitting an agent capable of removing a prescribed gaseous component in the EL devices. Specification; the paragraph bridging pages 2 and 3.

The objectives of the present invention were achieved by providing (1) a member for an electroluminescent device comprising a container a part of which is made of a porous material and an agent capable of removing a prescribed gaseous component, the removing agent being contained in the container, and (2) an EL device having such a member. See claims 1 and 7.

VI. ISSUES

The essential issue in this appeal is whether the Examiner has established a case of anticipation in rejecting claims 1-12 as anticipated under 35 U.S.C. §102(b) by Yamashita et al (US 5,189,405).

VII. GROUPING OF CLAIMS

Claims 1-12 have been rejected as anticipated under U.S.C. §102(b) by Yamashita et al, and all claims stand or fall together.

VIII. ARGUMENTS

The Examiner has not established a case of anticipation of the claimed invention over Yamashita et al and therefore the rejection of claims 1-12 over Yamashita et al should be reversed.

Claims 1-12 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Yamashita et al (U.S. 5,189,405). Yamashita et al disclose a thin film EL panel including a transparent substrate with an EL element formed on the substrate. Abstract.

In the Office Action dated April 10, 2002, and September 13, 2002, the Examiner argues that Yamashita et al disclose a plastic film 3, a moisture absorbing sheet 4 comprising moisture absorbing powder dispersed in an organic polymer, and a moisture proof sheet 5, which read on the porous sheet, the removing agent and the impermeable metal foil layer, respectively, in the presently claimed invention.

Appellants respectfully submit, however, that the Examiner has not established a case of anticipation. To establish anticipation, the Examiner must show that the cited reference teaches every aspect of the claimed invention either explicitly or impliedly. MPEP § 706.02.

Applicants respectfully submit that the removing agent of member for an electroluminescent device of the presently claimed invention and the moisture absorption sheet 4 as described in Yamashita are quite different in their constitutions from each other.

As pointed out by Appellants in the Amendment filed on July 10, 2002, the member for an electroluminescent device of the present invention (claim 1) comprises "a container a part of which is made of a porous material and a removing agent capable of removing a prescribed

APPELLANTS' BRIEF ON APPEAL
UNDER 37 C.F.R. § 1.192
U.S. Appln. No.: 09/809,273

gaseous component, the removing agent being contained in the container". For example, such a member is shown in Fig. 1.

On the other hand, the moisture absorption sheet as described in Yamashita is a sheet of an organic polymer with scattered powder of moisture absorbent (for example, a silica fine powder), as described in column 1, lines 53 to 55 and column 3, lines 3 to 6 thereof.

Further, Yamashita teaches that the moisture-proof sheet 5 is arranged on the outer surface of the moisture absorption sheet and the plastic film 3 is arranged on the inner surface of the moisture absorption sheet.

In the Office Action of September 13, 2002, the Examiner seems to consider that the moisture-proof sheet 5 and the plastic film 3 form a "container" and the moisture absorption sheet 4 is sandwiched therebetween. If so, Yamashita does not disclose or suggest the constitution of the presently claimed invention.

As discussed above, in the presently claimed invention, the removing agent capable of removing the prescribed gaseous component is contained in the container, a part of which is made of the porous material. However, the moisture-proof sheet 5 in Yamashita is not porous.

Yamashita also describes in column 3, lines 43 to 48, that the plastic film 3 is a moisture-proof and also is a gas barrier. Therefore, the plastic film is also not porous.

Under these circumstances, the device described in Yamashita has a structure such that the moisture absorption sheet 4 is sandwiched between a pair of the moisture-impermeable materials. Accordingly, the device described in Yamashita does not have any porous portion,

APPELLANTS' BRIEF ON APPEAL
UNDER 37 C.F.R. § 1.192
U.S. Appln. No.: 09/809,273

unlike the presently claimed invention. Yamashita neither describes nor suggests the presently claimed member for electroluminescent device.

In the present invention, the reason why a part of the container is made of the porous material is that the porous portion allows the moisture or gas that enters into the device to permeate the container and the removing agent in the container thus comes in contact with the moisture or gas to adsorb the moisture or gas. Yamashita neither describes, suggests nor appreciates the advantages of the mechanism of adsorption of the moisture or gas according to the present invention.

Accordingly, Appellants respectfully request reversal of the rejection of claims 1-12 as anticipated by Yamashita.

IX. CONCLUSION


Appellants respectfully request the members of the Board to reverse the rejection of all appealed claims and to find each of the claims allowable as defining subject matter is patentable over the applied reference.

The present Brief on Appeal is being filed in triplicate. Unless a check is submitted herewith for the fee required under 37 C.F.R. §1.192(a) and 1.17(c), please charge said fee to Deposit Account No. 19-4880.

APPELLANTS' BRIEF ON APPEAL
UNDER 37 C.F.R. § 1.192
U.S. Appln. No.: 09/809,273

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Fang Liu
Registration No. 51,283

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE



23373

PATENT TRADEMARK OFFICE

Date: May 12, 2003

APPENDIX

CLAIMS 1-12 ON APPEAL:

1. A member for an electroluminescent device comprising a container a part of which is made of a porous material and a removing agent capable of removing a prescribed gaseous component, the removing agent being contained in said container.

2. The member according to claim 1, wherein said container is made of two sheets joined together at their peripheries, one of said two sheets being a porous sheet, and the other being a non-porous sheet.

3. The member according to claim 2, wherein said porous sheet is an air-permeable laminate sheet comprising a porous layer and a reinforcing layer.

4. The member according to claim 3, wherein said reinforcing sheet is nonwoven fabric.

5. The member according to claim 2, wherein said porous sheet comprises a polyolefin-based resin.

6. The member according to claim 1, wherein said removing agent is capable of removing at least one of moisture, oxygen and organic vapors.

7. An electroluminescent device having a member comprising a container a part of which is made of a porous material and a removing agent capable of removing a prescribed gaseous component, the removing agent being contained in said container.

8. The electroluminescent device according to claim 7, wherein said container is made of two sheets joined together at their peripheries, one of said two sheets being a porous sheet, and the other being a non-porous sheet.

9. The electroluminescent device according to claim 8, wherein said porous sheet is an air-permeable laminate sheet comprising a porous layer and a reinforcing layer.

10. The electroluminescent device according to claim 9, wherein said reinforcing sheet is nonwoven fabric.

11. The electroluminescent device according to claim 8, wherein said porous sheet comprises a polyolefin-based resin.

12. The electroluminescent device according to claim 7, wherein said removing agent is capable of removing at least one of moisture, oxygen and organic vapors.



PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q63124

Hiroyuki NISHII, et al.

Appln. No.: 09/809,273

Group Art Unit: 1774

Confirmation No.: 4971

Examiner: Dawn L. Garrett

Filed: March 16, 2001

For: **MEMBER FOR ELECTROLUMINESCENT DEVICE AND ELECTROLUMINESCENT
DEVICE HAVING THE SAME**

SUBMISSION OF APPELLANTS' BRIEF ON APPEAL

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Submitted herewith please find an original and two copies of Appellants' Brief on Appeal. The USPTO is directed and authorized to charge the statutory fee of \$320.00 and all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account. A duplicate copy of this paper is attached.

Respectfully submitted,

Fang Liu
Registration No. 51,283

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE



23373

PATENT TRADEMARK OFFICE

Date: May 12, 2003

RECEIVED
MAY 14 2003
TC 1700 MAIL ROOM